Qualified Plan Provisions Enacted by the CARES Act

The recently-enacted Coronavirus Aid, Relief, and Economic Security ("CARES") Act affects retirement plans in many ways. The Act includes provisions intending to give certain employees new distribution and loan options in their 401(k) plan (or in their profit-sharing plan), and also waives minimum required distributions in 2020. Employers should also be on the lookout for a partial plan termination if at least 20% of plan participants are terminated during a plan year.

Distributions: Defined contribution plans (and IRAs) can allow certain employees to take a distribution of up to $100,000 (or the employee's total vested account balance, if less than $100,000) from the individual's account. This is true even if the employee does not meet the plan's (or IRA's) in-service distribution provisions (e.g., has not yet reached age 59-1/2). Qualified individuals include any employee who (i) suffers an adverse financial consequence as a result of a COVID-19-related furlough, lay off, reduction of hours, or quarantine; or (ii) becomes ill (or whose spouse or dependent becomes ill) with COVID-19 or a related condition. Such distribution is not subject to the additional 10% tax on early-distributions (pre-age 59-1/2), can be included in the participant's income ratably over a 3-year period, and can be repaid into the plan or into an IRA within 3 years.

Loans: A defined contribution plan may permit an individual impacted by COVID-19 (as described above) to take a loan of up to $100,000, or 100% of the individual's vested account balance, if the loan is taken on or before September 23, 2020. In addition, any loan payments due between March 27 and December 31, 2020—even payments for loans made after March 27—can be delayed for a period of one year. The overall length of the loan repayment schedule is extended by the length of the delay.

Required Minimum Distributions ("RMDs"): Due to the recent significant downturn in the financial markets, required minimum distributions for defined contribution plans (and for IRAs) are waived in 2020. This RMD waiver affects (i) beneficiaries of deceased participants, and (ii) any participant who must take an RMD because he/she reached age 70-1/2 before January 1, 2020 and who either is an owner or has terminated his/her employment. The employer must decide how to treat RMDs scheduled for 2020 on a consistent basis. Certain RMDs already paid in 2020 may be able to be rolled back into the plan, or into an IRA, even if the 60-day rollover period has already expired.

Over-The-Counter Drugs: Over-the-counter drugs are now eligible for reimbursement under a cafeteria plan's flexible spending account ("FSA"), health reimbursement arrangements ("HRA") or health savings accounts ("HSA").

Partial Plan Termination: If at least 20% of the participants in an employer's plan(s) are terminated during the plan year, even if the terminations result from the COVID-19 pandemic, all those terminated during the plan year might need to be 100% vested due to a partial plan termination, even if the terminated employees normally would be less than 100% vested. Whether a partial plan termination occurs is a facts-and-circumstances determination, and rehiring the terminated employees in the same plan year may prevent the occurrence of a partial plan termination and full vesting.

Plan Amendments: Incorporation of CARES Act provisions into a plan through a plan amendment can occur as late as 2022 or 2023, although consistent plan administration of those provisions can begin immediately. However, some employer elections and plan amendments must occur before the end of the current plan year (such as permitting a participant loan in a plan that currently does not do so). We can help with both the decision-making and timely amendment process.

If you have any questions about any of these issues, or if you would like more information to see how these events might impact your plan, please contact **Larry Schiller** vie email or at (248) 489-8600, extension 353.